

PATENT

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CERTIFICATE UNDER 37 CFR 1.8 I hereby certify that this correspondence is being transmitted via the United States Patent and Trademark Office electronic filing system on September 26, 2011.

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REPLY BRIEF

Mail Stop Appeal Brief – Patents
Commissioner for Patents
Alexandria, VA 22313-1450

Sir:

This is a Reply Brief responsive to Examiner's Answer dated July 25, 2011. The period for response for this Reply Brief runs through September 26, 2011 (September 25, 2011 being a Sunday).

No fees are believed to be due at this time. Please charge any fees that may be required or credit any overpayment to Deposit Account No. 50-1778.

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STATUS OF CLAIMS

Claims 1, 3–11, 13–22, 24–29, 31–36, 38–43 and 45–47 are pending and are the subject of this Appeal. Claims 2, 12, 23, 30, 37 and 44 were previously canceled.

Claims 1, 3, 4, 7–11, 13, 16–19, 22, 24, 25, 28, 29, 31–36, 38–41, 43 and 47 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Rueter (U.S. Patent No. 5,944,745) in view of Hatlestad et al. (U.S. Patent Publ. No. 2004/0122294) and Duffin et al (U.S. Patent No. 6,292,698).

Claims 5, 6, 14, 15, 26 and 27 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Rueter in view of Hatlestad et al. and Duffin et al., and further in view of Hwang (U.S. Patent No. 5,920,271).

Claims 20, 21, 42 and 46 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Rueter in view of Hatlestad et al. and Duffin et al., and further in view of Webb et al. (U.S. Patent No. 7,060,031).

Claim 45 stands rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Rueter in view of Hatlestad et al. and Duffin et al., and further in view of Tamura (U.S. Patent No. 5,434,611).

GROUND OF REJECTION TO BE REVIEWED ON APPEAL

Appellant submits the following grounds of rejection to be reviewed on Appeal:

1. The first ground of rejection presented for review is the rejection of claims 1, 3, 4, 7–11, 13, 16–19, 22, 24, 25, 28, 29, 31–36, 38–41, 43 and 47 under 35 U.S.C. § 103(a) as allegedly being unpatentable over Rueter (U.S. Patent No. 5,944,745) in view of Hatlestad et al. (U.S. Patent Publ. No. 2004/0122294) and Duffin et al. (U.S. Patent No. 6,292,698).

2. The second ground of rejection presented for review is the rejection of claims 5, 6, 14, 15, 26 and 27 under 35 U.S.C. § 103(a) as allegedly being unpatentable over Rueter in view of Hatlestad et al. and Duffin et al., and further in view of Hwang (U.S. Patent No. 5,920,271).

3. The third ground of rejection presented for review is the rejection of claims 20, 21, 42 and 46 under 35 U.S.C. § 103(a) as allegedly being unpatentable over Rueter in view of Hatlestad et al. and Duffin et al., and further in view of Webb et al. (U.S. Patent No. 7,060,031).

4. The fourth ground of rejection presented for review is the rejection of claim 45 under 35 U.S.C. § 103(a) as allegedly being unpatentable over Rueter in view of Hatlestad et al. and Duffin et al., and further in view of Tamura (U.S. Patent No. 5,434,611).

ARGUMENT

FIRST GROUND OF REJECTION UNDER APPEAL

GROUP 1 – (Claims 1, 3, 4 and 7)

Claims 1, 3, 4 and 7 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Rueter (U.S. Patent No. 5,944,745) in view of Hatlestad et al. (U.S. Patent Publ. No. 2004/0122294) and Duffin et al. (U.S. Patent No. 6,292,698).

Response to Examiner's Answer

In the Examiner's Answer, the Examiner argued that the "CPU" in Rueter corresponds to the "prioritization engine" recited in claim 1. Appellant submits that the Examiner erred in this interpretation of Rueter because the CPU in Rueter does not receive events from one or more remote monitors that obtain the events from interrogation of a plurality of medical devices implanted within different patients, and prioritize such received events. However, Appellant's claim 1 recites "receiving events at a prioritization engine from one or more remote monitors, wherein the one or more remote monitors obtain the events from interrogation of a plurality of medical devices implanted within different patients . . . prioritizing, with the prioritization engine, the received events." The determination of clinically significant events by the CPU in Rueter takes place with respect to data that is collected from a single patient by the CPU that makes the determination and is implanted within the patient from which the data is collected. Therefore, such events are not received from one or more remote monitors, much less from one or more remote monitors that obtain the events from interrogation a plurality of medical devices implanted within different patients. Rather, such events relate to a single patient in which the

CPU is implanted. Consequently, the determination of clinically significant events in Rueter is not a prioritization technique that prioritizes events received from the interrogation of a plurality of medical devices implanted within different patients. Accordingly, the “CPU” in Rueter cannot reasonably be said to disclose the “prioritization engine” recited in Appellant’s claim 1.

The Examiner also argued that synthesizing at least one environmental parameter with the at least one IMD parameter and reporting the resulting data for use to assist with patient health care decisions, as described in claim 14 of Hatlestad et al., discloses “presenting, with a user interface device, a list of patient and a list of the events for each patient based on the prioritization.” Appellant respectfully submits that the Examiner erred in this analysis for at least the following reasons. First, Hatlestad et al. does not disclose that “reporting the resulting data,” as described in claim 14 of Hatlestad et al., necessarily includes “presenting . . . a list of the patient.” Second, even if reporting the resulting data, as described in claim 14 of Hatlestad et al. includes “presenting . . . a list of patient,” as alleged by the Examiner, then Hatlestad et al. still fails to disclose that such an alleged presentation is based on a prioritization, much less a prioritization of events received from one or more remote monitors that obtain the events from interrogation of a plurality of medical devices implanted in different patients. Rather, as described in claim 28 of Hatlestad et al., synthesizing the at least one health-related parameter includes “correlating the at least one health-related parameter with the at least one environmental parameter and reporting the at least one health-related parameter with the at least one environmental parameter.” No mention is made of “presenting . . . a list of patient” in conjunction with the reporting of the at least one health-related parameter with the at least one environmental parameter. Moreover, the reporting of the at least one health-related parameter with the at least one environmental parameter in Hatlestad et al. is performed in response to a correlation between received IMD parameters and environmental parameters – not based on a prioritization of events received from one or more remote monitors that obtain the events from interrogation of a plurality of medical devices implanted in different patients. Therefore, contrary to the Examiner’s position, the synthesizing of at least one environmental parameter with the at least one IMD parameter and reporting the resulting data, as described in claim 14 of Hatlestad et al., cannot reasonably be said to disclose “presenting, with a user interface device, a list of patient and a list of the events for each patient based on the prioritization.”

A *prima facie* case of obviousness requires that the Examiner properly determine the scope and content of the prior art. For at least the reasons discussed above, the Examiner erred by failing to properly determine the scope and content of Rueter and Hatlestad et al. Accordingly, Appellant respectfully requests reversal of the rejection of Appellant's claim 1.

To the extent that the Examiner considers the "CPU" in Rueter as corresponding to the "prioritization engine" recited in Appellant's claim 1, and the synthesizing and reporting described in claim 14 of Hatlestad et al. as disclosing "presenting, with a user interface device, a list of patient and a list of the events for each patient based on the prioritization," despite Appellant's arguments to the contrary, the Examiner nevertheless acknowledged that "Rueter [sic] and Hatlestad teaches the limitations above, however it does not explicitly, teach that it is performed for multiple patients, and that is where Duffin is used."¹ Therefore, the Examiner acknowledged that Rueter and Hatlestad et al. does not disclose that "it" is performed for multiple patients, and turned to Duffin et al. as allegedly disclosing "it" being performed for multiple patients. It is not entirely clear to Appellant as to what the "it" mentioned by the Examiner refers. A *prima facie* case of obviousness requires that the Examiner properly ascertain the differences between the claimed invention and the prior art. The "it" specified by the Examiner does not properly identify the differences between the invention defined by Appellant's claim 1 and Rueter and Hatlestad et al., and constitutes an error by the Examiner. Accordingly, Appellant respectfully requests reversal of the rejection of Appellant's claim 1.

As best understood by Appellant, the Examiner is arguing that Rueter and Hatlestad et al. disclose prioritizing events received from a single IMD implanted within a single patient, and presenting a list of events for the patient based on the prioritization, but that Rueter and Hatlestad et al. do not disclose prioritizing events received from one or more remote monitors that obtain the events from interrogation of a plurality of medical devices implanted within different patients, and presenting a list of the patients and a list of the events for each of the patients based on the prioritization. The Examiner appears to have turned to Duffin et al. to overcome these deficiencies in Rueter and Hatlestad et al. However, Duffin et al. makes no mention of prioritization, much less prioritizing events received from one or more remote monitors that obtain the events from interrogation of a plurality of medical devices implanted within different patients. Moreover, Duffin et al. also makes no mention of presenting a list of patients and a list

¹ Examiner's Answer dated July 25, 2011, page 12, lines 3-5.

of events for each of the patients, much less presenting such lists based on a prioritization. In support of the Examiner's position, the Examiner cited the Global Communications and Monitoring System (GCMS) system in Duffin et al., and in particular, the functionality attributed to the GCMS system in Duffin et al. that involves "providing data collection at one central site from all study patients without requiring their active involvement or clinic visits."² However, providing data collection at one central site does not necessarily involve prioritizing events, much less prioritizing events received from one or more remote monitors that obtain the events from interrogation of a plurality of medical devices implanted within different patients. Similarly, providing data collection at one central site does not necessarily involve presenting a list of patients and a list of events for each of the patients, much less presenting such lists based on a prioritization. Accordingly, contrary to the Examiner's position, Duffin et al. fails to overcome the deficiencies already acknowledged by the Examiner with respect to Rueter and Hatlestad et al.

A *prima facie* case of obviousness requires that the Examiner properly determine the scope and content of the prior art. For at least the reasons discussed above, the Examiner erred by failing to properly determine the scope and content of Duffin et al. Accordingly, Appellant respectfully requests reversal of the rejection of Appellant's claim 1.

The Examiner argued that it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Rueter, Hatlestad et al. and Duffin et al. to arrive at the invention defined by Appellant's claim 1 because "[t]he well known elements described are merely a combination of old elements, and in the combination, each element merely would have performed the same function as it did separately."³ Appellant submits that the Examiner has erred in this analysis for at least the following reasons.

First, if one of ordinary skill in the art were to combine Rueter, Hatlestad et al. and Duffin et al. such that the CPU in Rueter (i.e., what the Examiner alleged as corresponding to the "prioritization engine" recited in claim 1) merely performs the same function as it did separately, as suggested by the Examiner, one of ordinary skill in the art would still not arrive the "prioritization engine" recited in Appellant's claim 1 because, as already explained above, the CPU in Rueter does not receive events from one or more remote monitors that obtain the events

² Duffin et al., col. 14, lines 25-29.

³ Examiner's Answer dated July 25, 2011, page 12, lines 8-13.

from interrogation of a plurality of medical devices implanted within different patients, and prioritize such received events. Rather, the determination of clinically significant events by the CPU in Rueter takes place with respect to events that are collected from a single patient by the CPU that makes the determination and is implanted within the patient. Accordingly, combining the teachings of Rueter, Hatlestad et al. and Duffin et al. in the manner suggested by the Examiner would not result in the invention defined by Appellant's claim 1.

Second, if one of ordinary skill in the art were to combine Rueter, Hatlestad et al. and Duffin et al. such that the "means to synthesize . . . and to report" recited in claim 14 of Hatlestad et al. (i.e., what the Examiner alleged as corresponding to the "user interface device" recited in claim 1) merely performs the same function as it did separately, as suggested by the Examiner, one of ordinary skill in the art would still not arrive the "user interface device" recited in Appellant's claim 1 because the synthesizing and reporting described in claim 14 of Hatlestad et al. does not necessarily involve presenting a list of the patients, much less presenting a list of the patients and a list of the events for each of the patients based on a prioritization. Rather, the reporting in Hatlestad et al. relates to the reporting of health-related parameters that are correlated with environmental parameters. No mention is made of correlating and reporting parameters received from one or more remote monitors that obtain the parameters from interrogation of a plurality of medical devices implanted in different patients. Instead, the health-related parameters appear to be related to a single IMD. Moreover, Hatlestad et al. makes no mention that the reporting of the health-related parameters involves presenting a list of patients and a list of events for each of the patients based on a prioritization. Accordingly, combining the teachings of Rueter, Hatlestad et al. and Duffin et al. in the manner suggested by the Examiner would not result in the invention defined by Appellant's claim 1.

For at least the reasons discussed above, if one were to combine Rueter, Hatlestad et al. and Duffin et al. such that, in combination, each element merely performs the same function as it did separately, as suggested by the Examiner, one would not arrive at the invention defined by Appellant's claim 1. Accordingly, any rationale as to why the Examiner's proposed combination would have been obvious to one of ordinary skill in the art at the time of Appellant's invention is not sufficient to explain why the invention defined by Appellant's claim 1 would have been obvious to one of ordinary skill in the art at the time of Appellant's invention.

A *prima facie* case of obviousness requires that the Examiner provide an apparent reason to combine known elements in the fashion specified by the claimed invention. For at least the reasons discussed above, the Examiner erred by failing to provide a rationale that is sufficient to explain why a person of ordinary skill in the art would have arrived at the invention defined by Appellant's claim 1 at the time of Appellant's invention. Moreover, as already discussed in Section F of the Appeal Brief dated May 10, 2011, the Examiner's rationale does not appear to be supported by the requisite factual findings necessary to support such a rationale. Accordingly, Appellant respectfully requests reversal of the rejection of Appellant's claim 1.

GROUP 2 – (Claims 8–11, 13 and 16)

Claims 8–11, 13 and 16 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Rueter (U.S. Patent No. 5,944,745) in view of Hatlestad et al. (U.S. Patent Publ. No. 2004/0122294) and Duffin et al (U.S. Patent No. 6,292,698). Appellant respectfully traverses the rejection.

Response to Examiner's Answer

In the Examiner's Answer, the Examiner argued that the "CPU" in Rueter corresponds to the "prioritization engine" recited in claim 8. Appellant submits that the Examiner erred in this interpretation of Rueter because the CPU in Rueter does not receive event data that describes a plurality of events from one or more remote monitors that interrogate a plurality of medical devices implanted in different patients to obtain event data, and assign a relative importance to each of the plurality of events. However, Appellant's claim 8 recites "interrogating, with one or more remote monitors, a plurality of medical devices implanted in different patients to obtain event data; receiving, with a prioritization engine, the event data from the one or more remote monitors; and assigning, with the prioritization engine, a relative importance to each of the events described by the received event data." The determination of clinically significant events by the CPU in Rueter takes place with respect to data that is collected from a single patient by the CPU that makes the determination and is implanted within the patient from which the data is collected. Therefore, such events are not received from one or more remote monitors, much less from one or more remote monitors that interrogate a plurality of medical devices implanted in different patients. Rather, such events relate to a single patient in which the CPU is implanted.

Consequently, the determination of clinically significant events in Rueter does not assign a relative importance to events received from the interrogation of a plurality of medical devices implanted within different patients. Accordingly, the “CPU” in Rueter cannot reasonably be said to disclose the “prioritization engine” recited in Appellant’s claim 8.

The Examiner also argued that the “portable device” (708) shown in FIG. 7 of Hatlestad et al. corresponds to the “prioritization engine” recited in claim 8. Appellant submits that the Examiner erred in this interpretation of Hatlestad et al. because the portable device in Hatlestad et al. does not receive event data that describes a plurality of events from one or more remote monitors that interrogate a plurality of medical devices implanted in different patients to obtain event data, and assign a relative importance to each of the plurality of events. Hatlestad et al. makes no mention of the portable device in Hatlestad et al. performing such functionality. Rather, Hatlestad et al. describes data from a single IMD being communicated to the portable device – not data from a plurality of medical devices implanted in different patients.⁴ Moreover, Hatlestad et al. does not appear to attribute any sort of assignment of relative importance functionality to the portable device (708) in Hatlestad et al. Accordingly, the “CPU” in Rueter cannot reasonably be said to disclose the “prioritization engine” recited in Appellant’s claim 8.

The Examiner also argued that synthesizing at least one environmental parameter with the at least one IMD parameter and reporting the resulting data for use to assist with patient health care decisions, as described in claim 14 of Hatlestad et al., discloses “presenting, with a user interface device, a list of patient and a list of the events for each patient based on the prioritization.” Appellant respectfully submits that the Examiner erred in this analysis for at least the reasons discussed above in the remarks for claim 1.

A *prima facie* case of obviousness requires that the Examiner properly determine the scope and content of the prior art. For at least the reasons discussed above, the Examiner erred by failing to properly determine the scope and content of Rueter and Hatlestad et al. Accordingly, Appellant respectfully requests reversal of the rejection of Appellant’s claim 8.

To the extent that the Examiner considers the “CPU” in Rueter as corresponding to the “prioritization engine” recited in Appellant’s claim 8, and the synthesizing and reporting described in claim 14 of Hatlestad et al. as disclosing “presenting, with a user interface device, a list of patient and a list of the events for each patient based on the prioritization,” despite

⁴ Hatlestad et al., paragraph [0062].

Appellant's arguments to the contrary, the Examiner nevertheless acknowledged that "Rueter [sic] and Hatlestad teaches the limitations above, however it does not explicitly, teach that it is performed for multiple patients, and that is where Duffin is used."⁵ Therefore, the Examiner acknowledged that Rueter and Hatlestad et al. does not disclose that "it" is performed for multiple patients, and turned to Duffin et al. as allegedly disclosing "it" being performed for multiple patients. It is not entirely clear to Appellant as to what the "it" mentioned by the Examiner refers. A *prima facie* case of obviousness requires that the Examiner properly ascertain the differences between the claimed invention and the prior art. The "it" specified by the Examiner does not properly identify the differences between the invention defined by Appellant's claim 8 and Rueter and Hatlestad et al., and constitutes an error by the Examiner. Accordingly, Appellant respectfully requests reversal of the rejection of Appellant's claim 8.

As best understood by Appellant, the Examiner is arguing that Rueter and Hatlestad et al. disclose assigning a relative importance to events collected by a single IMD implanted within a single patient, but that Rueter and Hatlestad et al. do not disclose assigning a relative importance to each of a plurality of events described by event data that is received from one or more remote monitors that interrogate a plurality of medical devices implanted in different patients. The Examiner appears to have turned to Duffin et al. to overcome these deficiencies in Rueter and Hatlestad et al. However, Duffin et al. makes no mention of assigning a relative importance to each of a plurality of events, much less assigning a relative importance to each of a plurality of events described by event data that is received from one or more remote monitors that interrogate a plurality of medical devices implanted in different patients. In support of the Examiner's position, the Examiner cited the Global Communications and Monitoring System (GCMS) system in Duffin et al., and in particular, the functionality attributed to the GCMS system in Duffin et al. that involves "providing data collection at one central site from all study patients without requiring their active involvement or clinic visits."⁶ However, providing data collection at one central site does not necessarily involve assigning a relative importance to each of a plurality of events. Accordingly, contrary to the Examiner's position, Duffin et al. fails to overcome the deficiencies already acknowledged by the Examiner with respect to Rueter and Hatlestad et al.

⁵ Examiner's Answer dated July 25, 2011, page 12, lines 3-5.

⁶ Duffin et al., col. 14, lines 25-29.

A *prima facie* case of obviousness requires that the Examiner properly determine the scope and content of the prior art. For at least the reasons discussed above, the Examiner erred by failing to properly determine the scope and content of Duffin et al. Accordingly, Appellant respectfully requests reversal of the rejection of Appellant's claim 8.

The Examiner argued that it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Rueter, Hatlestad et al. and Duffin et al. to arrive at the invention defined by Appellant's claim 8 because "[t]he well known elements described are merely a combination of old elements, and in the combination, each element merely would have performed the same function as it did separately."⁷ Appellant submits that the Examiner has erred in this analysis for at least the following reasons.

If one of ordinary skill in the art were to combine Rueter, Hatlestad et al. and Duffin et al. such that the CPU in Rueter (i.e., what the Examiner alleged as corresponding to the "prioritization engine" recited in claim 8) merely performs the same function as it did separately, as suggested by the Examiner, one of ordinary skill in the art would still not arrive the "prioritization engine" recited in Appellant's claim 8 because, as already explained above, the CPU in Rueter does not receive event data that describes a plurality of events from one or more remote monitors that interrogate a plurality of medical devices implanted in different patients to obtain event data, and assign a relative importance to each of the plurality of events. Rather, the determination of clinically significant events by the CPU in Rueter takes place with respect to events that are collected from a single patient by the CPU that makes the determination and is implanted within the patient. Therefore, combining the teachings of Rueter, Hatlestad et al. and Duffin et al. in the manner suggested by the Examiner would not result in the invention defined by Appellant's claim 8. Accordingly, any rationale as to why the Examiner's proposed combination would have been obvious to one of ordinary skill in the art at the time of Appellant's invention is not sufficient to explain why the invention defined by Appellant's claim 8 would have been obvious to one of ordinary skill in the art at the time of Appellant's invention.

A *prima facie* case of obviousness requires that the Examiner provide an apparent reason to combine known elements in the fashion specified by the claimed invention. For at least the reasons discussed above, the Examiner erred by failing to provide a rationale that is sufficient to explain why a person of ordinary skill in the art would have arrived at the invention defined by

⁷ Examiner's Answer dated July 25, 2011, page 12, lines 8–13.

Appellant's claim 8 at the time of Appellant's invention. Moreover, as already discussed in Section F of the Appeal Brief dated May 10, 2011, the Examiner's rationale does not appear to be supported by the requisite factual findings necessary to support such a rationale. Accordingly, Appellant respectfully requests reversal of the rejection of Appellant's claim 8.

GROUP 3 – (Claims 17–19, 22, 24, 25, 28 and 47)

Claims 17–19, 22, 24, 25, 28 and 47 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Rueter (U.S. Patent No. 5,944,745) in view of Hatlestad et al. (U.S. Patent Publ. No. 2004/0122294) and Duffin et al (U.S. Patent No. 6,292,698). Appellant respectfully traverses the rejection.

Response to Examiner's Answer

In the Examiner's Answer, the Examiner argued that the "CPU" in Rueter corresponds to the "prioritization engine" recited in claim 17. Appellant submits that the Examiner erred in this interpretation of Rueter because the CPU in Rueter does not receive events from one or more remote monitors that obtain the events from interrogation of a plurality of medical devices implanted within different patients, and prioritize such received events. However, Appellant's claim 17 recites "a prioritization engine to receive events from one or more remote monitors, and to prioritize the received events, wherein the one or more remote monitors obtain the events from interrogation of a plurality of medical devices implanted within different patients, wherein the events include therapy events and diagnostic events, and wherein the prioritization engine and the one or more remote monitors are both external to the patients." The determination of clinically significant events by the CPU in Rueter takes place with respect to data that is collected from a single patient by the CPU that makes the determination and is implanted within the patient from which the data is collected. Therefore, such events are not received from one or more remote monitors, much less from one or more remote monitors that obtain the events from interrogation a plurality of medical devices implanted within different patients. Rather, such events relate to a single patient in which the CPU is implanted. Consequently, the determination of clinically significant events in Rueter is not a prioritization technique that prioritizes events received from the interrogation of a plurality of medical devices implanted within different

patients. Accordingly, the “CPU” in Rueter cannot reasonably be said to disclose the “prioritization engine” recited in Appellant’s claim 17.

The Examiner also argued that the “portable device” (708) shown in FIG. 7 of Hatlestad et al. corresponds to the “prioritization engine” recited in claim 17. Appellant submits that the Examiner erred in this interpretation of Hatlestad et al. because the portable device in Hatlestad et al. does not receive events from one or more remote monitors that obtain the events from interrogation of a plurality of medical devices implanted within different patients, and prioritize such received events. Hatlestad et al. makes no mention of the portable device in Hatlestad et al. performing such functionality. Rather, Hatlestad et al. describes data from a single IMD being communicated to the portable device – not data from a plurality of medical devices implanted within different patients.⁸ Moreover, Hatlestad et al. does not appear to attribute any sort of prioritization functionality to the portable device in Hatlestad et al. Accordingly, the “CPU” in Rueter cannot reasonably be said to disclose the “prioritization engine” recited in Appellant’s claim 17.

The Examiner also argued that synthesizing at least one environmental parameter with the at least one IMD parameter and reporting the resulting data for use to assist with patient health care decisions, as described in claim 14 of Hatlestad et al., discloses “presenting, with a user interface device, a list of patient and a list of the events for each patient based on the prioritization.” Appellant respectfully submits that the Examiner erred in this analysis for at least the reasons discussed above in the remarks for claim 1.

A *prima facie* case of obviousness requires that the Examiner properly determine the scope and content of the prior art. For at least the reasons discussed above, the Examiner erred by failing to properly determine the scope and content of Rueter and Hatlestad et al. Accordingly, Appellant respectfully requests reversal of the rejection of Appellant’s claim 17.

To the extent that the Examiner considers the “CPU” in Rueter as corresponding to the “prioritization engine” recited in Appellant’s claim 17, and the synthesizing and reporting described in claim 14 of Hatlestad et al. as disclosing “presenting, with a user interface device, a list of patient and a list of the events for each patient based on the prioritization,” despite Appellant’s arguments to the contrary, the Examiner nevertheless acknowledged that “Rueter [sic] and Hatlestad teaches the limitations above, however it does not explicitly, teach that it is

⁸ Hatlestad et al., paragraph [0062].

performed for multiple patients, and that is where Duffin is used.”⁹ Therefore, the Examiner acknowledged that Rueter and Hatlestad et al. does not disclose that “it” is performed for multiple patients, and turned to Duffin et al. as allegedly disclosing “it” being performed for multiple patients. It is not entirely clear to Appellant as to what the “it” mentioned by the Examiner refers. A *prima facie* case of obviousness requires that the Examiner properly ascertain the differences between the claimed invention and the prior art. The “it” specified by the Examiner does not properly identify the differences between the invention defined by Appellant’s claim 17 and Rueter and Hatlestad et al., and constitutes an error by the Examiner. Accordingly, Appellant respectfully requests reversal of the rejection of Appellant’s claim 17.

As best understood by Appellant, the Examiner is arguing that Rueter and Hatlestad et al. discloses a prioritization engine that prioritizes events received from a single IMD implanted within a single patient, and presents a list of events for the patient based on the prioritization, but that Rueter and Hatlestad et al. do not disclose a prioritization engine that prioritizes events received from one or more remote monitors that obtain the events from interrogation of a plurality of medical devices implanted within different patients, and present a list of the patients and a list of the events for each of the patients based on the prioritization. The Examiner appears to have turned to Duffin et al. to overcome these deficiencies in Rueter and Hatlestad et al. However, Duffin et al. makes no mention of prioritization, much less prioritizing events received from one or more remote monitors that obtain the events from interrogation of a plurality of medical devices implanted within different patients. Moreover, Duffin et al. also makes no mention of presenting a list of patients and a list of events for each of the patients, much less presenting such lists based on a prioritization. In support of the Examiner’s position, the Examiner cited the Global Communications and Monitoring System (GCMS) system in Duffin et al., and in particular, the functionality attributed to the GCMS system in Duffin et al. that involves “providing data collection at one central site from all study patients without requiring their active involvement or clinic visits.”¹⁰ However, providing data collection at one central site does not necessarily involve prioritizing events, much less prioritizing events received from one or more remote monitors that obtain the events from interrogation of a plurality of medical devices implanted within different patients. Similarly, providing data collection at one central

⁹ Examiner’s Answer dated July 25, 2011, page 15, lines 14–18.

¹⁰ Duffin et al., col. 14, lines 25–29.

site does not necessarily involve presenting a list of patients and a list of events for each of the patients, much less presenting such lists based on a prioritization. Accordingly, contrary to the Examiner's position, Duffin et al. fails to overcome the deficiencies already acknowledged by the Examiner with respect to Rueter and Hatlestad et al.

A *prima facie* case of obviousness requires that the Examiner properly determine the scope and content of the prior art. For at least the reasons discussed above, the Examiner erred by failing to properly determine the scope and content of Duffin et al. Accordingly, Appellant respectfully requests reversal of the rejection of Appellant's claim 17.

The Examiner argued that it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Rueter, Hatlestad et al. and Duffin et al. to arrive at the invention defined by Appellant's claim 17 because "[t]he well known elements described are merely a combination of old elements, and in the combination, each element merely would have performed the same function as it did separately."¹¹ Appellant submits that the Examiner has erred in this analysis for at least the following reasons.

First, if one of ordinary skill in the art were to combine Rueter, Hatlestad et al. and Duffin et al. such that the CPU in Rueter (i.e., what the Examiner alleged as corresponding to the "prioritization engine" recited in claim 17) merely performs the same function as it did separately, as suggested by the Examiner, one of ordinary skill in the art would still not arrive the "prioritization engine" recited in Appellant's claim 17 because, as already explained above, the CPU in Rueter does not receive events from one or more remote monitors that obtain the events from interrogation of a plurality of medical devices implanted within different patients, and prioritize such received events. Rather, the determination of clinically significant events by the CPU in Rueter takes place with respect to events that are collected from a single patient by the CPU that makes the determination and is implanted within the patient. Accordingly, combining the teachings of Rueter, Hatlestad et al. and Duffin et al. in the manner suggested by the Examiner would not result in the invention defined by Appellant's claim 17.

Second, if one of ordinary skill in the art were to combine Rueter, Hatlestad et al. and Duffin et al. such that the "means to synthesize . . . and to report" recited in claim 14 of Hatlestad et al. (i.e., what the Examiner alleged as corresponding to the "user interface device" recited in claim 17) merely performs the same function as it did separately, as suggested by the Examiner,

¹¹ Examiner's Answer dated July 25, 2011, page 15, line 19 to page 16, line 2.

one of ordinary skill in the art would still not arrive the “user interface device” recited in Appellant’s claim 17 because the synthesizing and reporting described in claim 14 of Hatlestad et al. does not necessarily involve presenting a list of the patients, much less presenting a list of the patients and a list of the events for each of the patients based on a prioritization. Rather, the reporting in Hatlestad et al. relates to the reporting of health-related parameters that are correlated with environmental parameters. No mention is made of correlating and reporting parameters received from one or more remote monitors that obtain the parameters from interrogation of a plurality of medical devices implanted in different patients. Instead, the health-related parameters appear to be related to a single IMD. Moreover, Hatlestad et al. makes no mention that the reporting of the health-related parameters involves presenting a list of patients and a list of events for each of the patients based on a prioritization. Accordingly, combining the teachings of Rueter, Hatlestad et al. and Duffin et al. in the manner suggested by the Examiner would not result in the invention defined by Appellant’s claim 17.

For at least the reasons discussed above, if one were to combine Rueter, Hatlestad et al. and Duffin et al. such that, in combination, each element merely performs the same function as it did separately, as suggested by the Examiner, one would not arrive at the invention defined by Appellant’s claim 17. Accordingly, any rationale as to why the Examiner’s proposed combination would have been obvious to one of ordinary skill in the art at the time of Appellant’s invention is not sufficient to explain why the invention defined by Appellant’s claim 17 would have been obvious to one of ordinary skill in the art at the time of the invention.

A *prima facie* case of obviousness requires that the Examiner provide an apparent reason to combine known elements in the fashion specified by the claimed invention. For at least the reasons discussed above, the Examiner erred by failing to provide a rationale that is sufficient to explain why a person of ordinary skill in the art would have arrived at the invention defined by Appellant’s claim 17 at the time of Appellant’s invention. Moreover, as already discussed in Section F of the Appeal Brief dated May 10, 2011, the Examiner’s rationale does not appear to be supported by the requisite factual findings necessary to support such a rationale. Accordingly, Appellant respectfully requests reversal of the rejection of Appellant’s claim 17.

GROUP 4 – (Claims 29, 31 and 32)

Claims 29, 31 and 32 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over (U.S. Patent No. 5,944,745) in view of Hatlestad et al. (U.S. Patent Publ. No. 2004/0122294) and Duffin et al (U.S. Patent No. 6,292,698). Appellant respectfully traverses the rejection.

Response to Examiner's Answer

In the Examiner's Answer, the Examiner argued that the functionality performed by the "CPU" in Rueter corresponds to the "instructions for causing a programmable processor to . . . receive events . . . [and] prioritize the received events" recited in claim 29. Appellant submits that the Examiner erred in this interpretation of Rueter because the CPU in Rueter does not receive events from one or more remote monitors that obtain the events from interrogation of a plurality of medical devices implanted within different patients, and prioritize such received events. However, Appellant's claim 29 recites "instructions for causing a programmable processor to: receive events from a plurality of remote monitors, wherein each of the remote monitors obtains the events from interrogation of a medical device implanted within a different patient, wherein the events include therapy events and diagnostic events, and wherein the programmable processor and the remote monitors are both external to the patients; [and] prioritize the received events." The determination of clinically significant events by the CPU in Rueter takes place with respect to data that is collected from a single patient by the CPU that makes the determination and is implanted within the patient from which the data is collected. Therefore, such events are not received from one or more remote monitors, much less from one or more remote monitors that obtain the events from interrogation a plurality of medical devices implanted within different patients. Rather, such events relate to a single patient in which the CPU is implanted. Consequently, the determination of clinically significant events in Rueter is not a prioritization technique that prioritizes events received from the interrogation of a plurality of medical devices implanted within different patients. Accordingly, the "CPU" in Rueter cannot reasonably be said to disclose the "instructions for causing a programmable processor to . . . receive events . . . [and] prioritize the received events" recited in Appellant's claim 29.

The Examiner also argued that the "portable device" (708) shown in FIG. 7 of Hatlestad et al. corresponds to the "instructions for causing a programmable processor to . . . receive events

... [and] prioritize the received events” recited in claim 29. Appellant submits that the Examiner erred in this interpretation of Hatlestad et al. because the portable device in Hatlestad et al. does not receive events from one or more remote monitors that obtain the events from interrogation of a plurality of medical devices implanted within different patients, and prioritize such received events. Hatlestad et al. makes no mention of the portable device in Hatlestad et al. performing such functionality. Rather, Hatlestad et al. describes data from a single IMD being communicated to the portable device – not data from a plurality of medical devices implanted within different patients.¹² Moreover, Hatlestad et al. does not appear to attribute any sort of prioritization functionality to the portable device in Hatlestad et al. Accordingly, the “CPU” in Rueter cannot reasonably be said to disclose the “instructions for causing a programmable processor to . . . receive events . . . [and] prioritize the received events” recited in Appellant’s claim 29.

The Examiner also argued that synthesizing at least one environmental parameter with the at least one IMD parameter and reporting the resulting data for use to assist with patient health care decisions, as described in claim 14 of Hatlestad et al., discloses “presenting, with a user interface device, a list of patient and a list of the events for each patient based on the prioritization.” Appellant respectfully submits that the Examiner erred in this analysis for at least the reasons discussed above in the remarks for claim 1.

A *prima facie* case of obviousness requires that the Examiner properly determine the scope and content of the prior art. For at least the reasons discussed above, the Examiner erred by failing to properly determine the scope and content of Rueter and Hatlestad et al. Accordingly, Appellant respectfully requests reversal of the rejection of Appellant’s claim 29.

To the extent that the Examiner considers the “CPU” in Rueter as corresponding to the “instructions for causing a programmable processor to . . . receive events . . . [and] prioritize the received events” recited in Appellant’s claim 29, and the synthesizing and reporting described in claim 14 of Hatlestad et al. as disclosing “presenting, with a user interface device, a list of patient and a list of the events for each patient based on the prioritization,” despite Appellant’s arguments to the contrary, the Examiner nevertheless acknowledged that “Rueter [sic] and Hatlestad teaches the limitations above, however it does not explicitly, teach that it is performed

¹² Hatlestad et al., paragraph [0062].

for multiple patients, and that is where Duffin is used.”¹³ Therefore, the Examiner acknowledged that Rueter and Hatlestad et al. does not disclose that “it” is performed for multiple patients, and turned to Duffin et al. as allegedly disclosing “it” being performed for multiple patients. It is not entirely clear to Appellant as to what the “it” mentioned by the Examiner refers. A *prima facie* case of obviousness requires that the Examiner properly ascertain the differences between the claimed invention and the prior art. The “it” specified by the Examiner does not properly identify the differences between the invention defined by Appellant’s claim 29 and Rueter and Hatlestad et al., and constitutes an error by the Examiner. Accordingly, Appellant respectfully requests reversal of the rejection of Appellant’s claim 29.

As best understood by Appellant, the Examiner is arguing that Rueter and Hatlestad et al. discloses instructions for causing a programmable processor to prioritize events received from a single IMD implanted within a single patient, and present a list of events for the patient based on the prioritization, but that Rueter and Hatlestad et al. do not disclose instructions for causing a programmable processor to prioritize events received from one or more remote monitors that obtain the events from interrogation of a plurality of medical devices implanted within different patients, and present a list of the patients and a list of the events for each of the patients based on the prioritization. The Examiner appears to have turned to Duffin et al. to overcome these deficiencies in Rueter and Hatlestad et al. However, Duffin et al. makes no mention of prioritization, much less prioritizing events received from one or more remote monitors that obtain the events from interrogation of a plurality of medical devices implanted within different patients. Moreover, Duffin et al. also makes no mention of presenting a list of patients and a list of events for each of the patients, much less presenting such lists based on a prioritization. In support of the Examiner’s position, the Examiner cited the Global Communications and Monitoring System (GCMS) system in Duffin et al., and in particular, the functionality attributed to the GCMS system in Duffin et al. that involves “providing data collection at one central site from all study patients without requiring their active involvement or clinic visits.”¹⁴ However, providing data collection at one central site does not necessarily involve prioritizing events, much less prioritizing events received from one or more remote monitors that obtain the events from interrogation of a plurality of medical devices implanted within different patients.

¹³ Examiner’s Answer dated July 25, 2011, page 17, lines 10–14.

¹⁴ Duffin et al., col. 14, lines 25–29.

Similarly, providing data collection at one central site does not necessarily involve presenting a list of patients and a list of events for each of the patients, much less presenting such lists based on a prioritization. Accordingly, contrary to the Examiner's position, Duffin et al. fails to overcome the deficiencies already acknowledged by the Examiner with respect to Rueter and Hatlestad et al.

A *prima facie* case of obviousness requires that the Examiner properly determine the scope and content of the prior art. For at least the reasons discussed above, the Examiner erred by failing to properly determine the scope and content of Duffin et al. Accordingly, Appellant respectfully requests reversal of the rejection of Appellant's claim 29.

The Examiner argued that it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Rueter, Hatlestad et al. and Duffin et al. to arrive at the invention defined by Appellant's claim 29 because "[t]he well known elements described are merely a combination of old elements, and in the combination, each element merely would have performed the same function as it did separately."¹⁵ Appellant submits that the Examiner has erred in this analysis for at least the following reasons.

First, if one of ordinary skill in the art were to combine Rueter, Hatlestad et al. and Duffin et al. such that the CPU in Rueter merely performs the same function as it did separately, as suggested by the Examiner, one of ordinary skill in the art would still not arrive the "instructions for causing a programmable processor to . . . receive events . . . [and] prioritize the received events" recited in Appellant's claim 29 because, as already explained above, the CPU in Rueter does not receive events from one or more remote monitors that obtain the events from interrogation of a plurality of medical devices implanted within different patients, and prioritize such received events. Rather, the determination of clinically significant events by the CPU in Rueter takes place with respect to events that are collected from a single patient by the CPU that makes the determination and is implanted within the patient. Accordingly, combining the teachings of Rueter, Hatlestad et al. and Duffin et al. in the manner suggested by the Examiner would not result in the invention defined by Appellant's claim 29.

Second, if one of ordinary skill in the art were to combine Rueter, Hatlestad et al. and Duffin et al. such that the "means to synthesize . . . and to report" recited in claim 14 of Hatlestad et al. merely performs the same function as it did separately, as suggested by the Examiner, one

¹⁵ Examiner's Answer dated July 25, 2011, page 17, lines 15–20.

of ordinary skill in the art would still not arrive the “instructions for causing a programmable processor to . . . present a list of the patients and a list of the events” recited in Appellant’s claim 29 because the synthesizing and reporting described in claim 14 of Hatlestad et al. does not necessarily involve presenting a list of the patients, much less presenting a list of the patients and a list of the events for each of the patients based on a prioritization. Rather, the reporting in Hatlestad et al. relates to the reporting of health-related parameters that are correlated with environmental parameters. No mention is made of correlating and reporting parameters received from one or more remote monitors that obtain the parameters from interrogation of a plurality of medical devices implanted in different patients. Instead, the health-related parameters appear to be related to a single IMD. Moreover, Hatlestad et al. makes no mention that the reporting of the health-related parameters involves presenting a list of patients and a list of events for each of the patients based on a prioritization. Accordingly, combining the teachings of Rueter, Hatlestad et al. and Duffin et al. in the manner suggested by the Examiner would not result in the invention defined by Appellant’s claim 29.

For at least the reasons discussed above, if one were to combine Rueter, Hatlestad et al. and Duffin et al. such that, in combination, each element merely performs the same function as it did separately, as suggested by the Examiner, one would not arrive at the invention defined by Appellant’s claim 29. Accordingly, any rationale as to why the Examiner’s proposed combination would have been obvious to one of ordinary skill in the art at the time of Appellant’s invention is not sufficient to explain why the invention defined by Appellant’s claim 29 would have been obvious to one of ordinary skill in the art at the time of the invention.

A *prima facie* case of obviousness requires that the Examiner provide an apparent reason to combine known elements in the fashion specified by the claimed invention. For at least the reasons discussed above, the Examiner erred by failing to provide a rationale that is sufficient to explain why a person of ordinary skill in the art would have arrived at the invention defined by Appellant’s claim 29 at the time of Appellant’s invention. Moreover, as already discussed in Section F of the Appeal Brief dated May 10, 2011, the Examiner’s rationale does not appear to be supported by the requisite factual findings necessary to support such a rationale. Accordingly, Appellant respectfully requests reversal of the rejection of Appellant’s claim 29.

GROUP 5 – (Claims 33–36 and 38)

Claims 33–36 and 38 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over (U.S. Patent No. 5,944,745) in view of Hatlestad et al. (U.S. Patent Publ. No. 2004/0122294) and Duffin et al (U.S. Patent No. 6,292,698). Appellant respectfully traverses the rejection.

Response to Examiner's Answer

In the Examiner's Answer, the Examiner argued that the "CPU" in Rueter corresponds to the "instructions for causing a programmable processor to . . . receive event data . . . and assign a relative importance to each event" recited in claim 33. Appellant submits that the Examiner erred in this interpretation of Rueter because the CPU in Rueter does not receive event data that describes a plurality of events from one or more remote monitors that interrogate a plurality of medical devices implanted in different patients to obtain event data, and assign a relative importance to each of the plurality of events. However, Appellant's claim 33 recites "instructions for causing a programmable processor to: receive event data from one or more remote monitors, wherein the one or more remote monitors interrogate a plurality of medical devices implanted in different patients to obtain the event data, . . . and assign a relative importance to each event described by the received event data, wherein the programmable processor is external to the patients." The determination of clinically significant events by the CPU in Rueter takes place with respect to data that is collected from a single patient by the CPU that makes the determination and is implanted within the patient from which the data is collected. Therefore, such events are not received from one or more remote monitors, much less from one or more remote monitors that interrogate a plurality of medical devices implanted in different patients. Rather, such events relate to a single patient in which the CPU is implanted. Consequently, the determination of clinically significant events in Rueter does not assign a relative importance to events received from the interrogation of a plurality of medical devices implanted in different patients. Accordingly, the "CPU" in Rueter cannot reasonably be said to disclose the "instructions for causing a programmable processor to . . . receive event data . . . and assign a relative importance to each event" recited in Appellant's claim 33.

The Examiner also argued that the "portable device" (708) shown in FIG. 7 of Hatlestad et al. corresponds to the "instructions for causing a programmable processor to . . . receive event

data . . . and assign a relative importance to each event” recited in claim 33. Appellant submits that the Examiner erred in this interpretation of Hatlestad et al. because the portable device in Hatlestad et al. does not receive event data that describes a plurality of events from one or more remote monitors that interrogate a plurality of medical devices implanted in different patients to obtain event data, and assign a relative importance to each of the plurality of events. Hatlestad et al. makes no mention of the portable device in Hatlestad et al. performing such functionality. Rather, Hatlestad et al. describes data from a single IMD being communicated to the portable device – not data from a plurality of medical devices implanted in different patients.¹⁶ Moreover, Hatlestad et al. does not appear to attribute any sort of assignment of relative importance functionality to the portable device (708) in Hatlestad et al. Accordingly, the “CPU” in Rueter cannot reasonably be said to disclose the “instructions for causing a programmable processor to . . . receive event data . . . and assign a relative importance to each event” recited in Appellant’s claim 33.

The Examiner also argued that synthesizing at least one environmental parameter with the at least one IMD parameter and reporting the resulting data for use to assist with patient health care decisions, as described in claim 14 of Hatlestad et al., discloses “presenting, with a user interface device, a list of patient and a list of the events for each patient based on the prioritization.” Appellant respectfully submits that the Examiner erred in this analysis for at least the reasons discussed above in the remarks for claim 1.

A *prima facie* case of obviousness requires that the Examiner properly determine the scope and content of the prior art. For at least the reasons discussed above, the Examiner erred by failing to properly determine the scope and content of Rueter and Hatlestad et al. Accordingly, Appellant respectfully requests reversal of the rejection of Appellant’s claim 33.

To the extent that the Examiner considers the “CPU” in Rueter as corresponding to the “instructions for causing a programmable processor to . . . receive event data . . . and assign a relative importance to each event” recited in Appellant’s claim 33, and the synthesizing and reporting described in claim 14 of Hatlestad et al. as disclosing “presenting, with a user interface device, a list of patient and a list of the events for each patient based on the prioritization,” despite Appellant’s arguments to the contrary, the Examiner nevertheless acknowledged that “Rueter [sic] and Hatlestad teaches the limitations above, however it does not explicitly, teach

¹⁶ Hatlestad et al., paragraph [0062].

that it is performed for multiple patients, and that is where Duffin is used.”¹⁷ Therefore, the Examiner acknowledged that Rueter and Hatlestad et al. does not disclose that “it” is performed for multiple patients, and turned to Duffin et al. as allegedly disclosing “it” being performed for multiple patients. It is not entirely clear to Appellant as to what the “it” mentioned by the Examiner refers. A *prima facie* case of obviousness requires that the Examiner properly ascertain the differences between the claimed invention and the prior art. The “it” specified by the Examiner does not properly identify the differences between the invention defined by Appellant’s claim 33 and Rueter and Hatlestad et al., and constitutes an error by the Examiner. Accordingly, Appellant respectfully requests reversal of the rejection of Appellant’s claim 33.

As best understood by Appellant, the Examiner is arguing that Rueter and Hatlestad et al. disclose assigning a relative importance to events collected by a single IMD implanted within a single patient, but that Rueter and Hatlestad et al. do not disclose assigning a relative importance to each of a plurality of events described by event data that is received from one or more remote monitors that interrogate a plurality of medical devices implanted in different patients. The Examiner appears to have turned to Duffin et al. to overcome these deficiencies in Rueter and Hatlestad et al. However, Duffin et al. makes no mention of assigning a relative importance to each of a plurality of events, much less assigning a relative importance to each of a plurality of events described by event data that is received from one or more remote monitors that interrogate a plurality of medical devices implanted in different patients. In support of the Examiner’s position, the Examiner cited the Global Communications and Monitoring System (GCMS) system in Duffin et al., and in particular, the functionality attributed to the GCMS system in Duffin et al. that involves “providing data collection at one central site from all study patients without requiring their active involvement or clinic visits.”¹⁸ However, providing data collection at one central site does not necessarily involve assigning a relative importance to each of a plurality of events. Accordingly, contrary to the Examiner’s position, Duffin et al. fails to overcome the deficiencies already acknowledged by the Examiner with respect to Rueter and Hatlestad et al.

A *prima facie* case of obviousness requires that the Examiner properly determine the scope and content of the prior art. For at least the reasons discussed above, the Examiner erred

¹⁷ Examiner’s Answer dated July 25, 2011, page 19, lines 13–17.

¹⁸ Duffin et al., col. 14, lines 25–29.

by failing to properly determine the scope and content of Duffin et al. Accordingly, Appellant respectfully requests reversal of the rejection of Appellant's claim 33.

The Examiner argued that it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Rueter, Hatlestad et al. and Duffin et al. to arrive at the invention defined by Appellant's claim 33 because "[t]he well known elements described are merely a combination of old elements, and in the combination, each element merely would have performed the same function as it did separately."¹⁹ Appellant submits that the Examiner has erred in this analysis for at least the following reasons.

If one of ordinary skill in the art were to combine Rueter, Hatlestad et al. and Duffin et al. such that the CPU in Rueter merely performs the same function as it did separately, as suggested by the Examiner, one of ordinary skill in the art would still not arrive the "instructions for causing a programmable processor to . . . receive event data . . . and assign a relative importance to each event" recited in Appellant's claim 33 because, as already explained above, the CPU in Rueter does not receive event data that describes a plurality of events from one or more remote monitors that interrogate a plurality of medical devices implanted in different patients to obtain event data, and assign a relative importance to each of the plurality of events. Rather, the determination of clinically significant events by the CPU in Rueter takes place with respect to events that are collected from a single patient by the CPU that makes the determination and is implanted within the patient. Therefore, combining the teachings of Rueter, Hatlestad et al. and Duffin et al. in the manner suggested by the Examiner would not result in the invention defined by Appellant's claim 33. Accordingly, any rationale as to why the Examiner's proposed combination would have been obvious to one of ordinary skill in the art at the time of Appellant's invention is not sufficient to explain why the invention defined by Appellant's claim 33 would have been obvious to one of ordinary skill in the art at the time of the invention.

A *prima facie* case of obviousness requires that the Examiner provide an apparent reason to combine known elements in the fashion specified by the claimed invention. For at least the reasons discussed above, the Examiner erred by failing to provide a rationale that is sufficient to explain why a person of ordinary skill in the art would have arrived at the invention defined by Appellant's claim 33 at the time of Appellant's invention. Moreover, as already discussed in Section F of the Appeal Brief dated May 10, 2011, the Examiner's rationale does not appear to

¹⁹ Examiner's Answer dated July 25, 2011, page 19, line 18 to page 20, line 2.

be supported by the requisite factual findings necessary to support such a rationale. Accordingly, Appellant respectfully requests reversal of the rejection of Appellant's claim 33.

GROUP 6 – (Claims 39–41 and 43)

Claims 39–41 and 43 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Rueter (U.S. Patent No. 5,944,745) in view of Hatlestad et al. (U.S. Patent Publ. No. 2004/0122294) and Duffin et al (U.S. Patent No. 6,292,698). Appellant respectfully traverses the rejection.

Response to Examiner's Answer

In the Examiner's Answer, the Examiner argued that the "CPU" in Rueter corresponds to the "prioritization engine" recited in claim 39. Appellant submits that the Examiner erred in this interpretation of Rueter because the CPU in Rueter does not receive events from one or more remote monitors that obtain the events from interrogation of a plurality of medical devices implanted within different patients, and prioritize such received events. However, Appellant's claim 39 recites "a prioritization engine to receive events from a plurality of remote monitors, and to prioritize the received events, wherein each of the remote monitors obtains the events from interrogation of a medical device implanted within a different patient, wherein the events include therapy events and diagnostic events, and wherein the prioritization engine and the remote monitors are both external to the patient." The determination of clinically significant events by the CPU in Rueter takes place with respect to data that is collected from a single patient by the CPU that makes the determination and is implanted within the patient from which the data is collected. Therefore, such events are not received from one or more remote monitors, much less from one or more remote monitors that obtain the events from interrogation a plurality of medical devices implanted within different patients. Rather, such events relate to a single patient in which the CPU is implanted. Consequently, the determination of clinically significant events in Rueter is not a prioritization technique that prioritizes events received from the interrogation of a plurality of medical devices implanted within different patients. Accordingly, the "CPU" in Rueter cannot reasonably be said to disclose the "prioritization engine" recited in Appellant's claim 39.

The Examiner also argued that the “portable device” (708) shown in FIG. 7 of Hatlestad et al. corresponds to the “prioritization engine” recited in claim 39. Appellant submits that the Examiner erred in this interpretation of Hatlestad et al. because the portable device in Hatlestad et al. does not receive events from one or more remote monitors that obtain the events from interrogation of a plurality of medical devices implanted within different patients, and prioritize such received events. Hatlestad et al. makes no mention of the portable device in Hatlestad et al. performing such functionality. Rather, Hatlestad et al. describes data from a single IMD being communicated to the portable device – not data from a plurality of medical devices implanted within different patients.²⁰ Moreover, Hatlestad et al. does not appear to attribute any sort of prioritization functionality to the portable device in Hatlestad et al. Accordingly, the “CPU” in Rueter cannot reasonably be said to disclose the “prioritization engine” recited in Appellant’s claim 39.

The Examiner also argued that synthesizing at least one environmental parameter with the at least one IMD parameter and reporting the resulting data for use to assist with patient health care decisions, as described in claim 14 of Hatlestad et al., discloses “presenting, with a user interface device, a list of patient and a list of the events for each patient based on the prioritization.” Appellant respectfully submits that the Examiner erred in this analysis for at least the reasons discussed above in the remarks for claim 1.

A *prima facie* case of obviousness requires that the Examiner properly determine the scope and content of the prior art. For at least the reasons discussed above, the Examiner erred by failing to properly determine the scope and content of Rueter and Hatlestad et al. Accordingly, Appellant respectfully requests reversal of the rejection of Appellant’s claim 39.

To the extent that the Examiner considers the “CPU” in Rueter as corresponding to the “prioritization engine” recited in Appellant’s claim 39, and the synthesizing and reporting described in claim 14 of Hatlestad et al. as disclosing “presenting, with a user interface device, a list of patient and a list of the events for each patient based on the prioritization,” despite Appellant’s arguments to the contrary, the Examiner nevertheless acknowledged that “Rueter [sic] and Hatlestad teaches the limitations above, however it does not explicitly, teach that it is performed for multiple patients, and that is where Duffin is used.”²¹ Therefore, the Examiner

²⁰ Hatlestad et al., paragraph [0062].

²¹ Examiner’s Answer dated July 25, 2011, page 22, lines 1–5.

acknowledged that Rueter and Hatlestad et al. does not disclose that “it” is performed for multiple patients, and turned to Duffin et al. as allegedly disclosing “it” being performed for multiple patients. It is not entirely clear to Appellant as to what the “it” mentioned by the Examiner refers. A *prima facie* case of obviousness requires that the Examiner properly ascertain the differences between the claimed invention and the prior art. The “it” specified by the Examiner does not properly identify the differences between the invention defined by Appellant’s claim 39 and Rueter and Hatlestad et al., and constitutes an error by the Examiner. Accordingly, Appellant respectfully requests reversal of the rejection of Appellant’s claim 39.

As best understood by Appellant, the Examiner is arguing that Rueter and Hatlestad et al. discloses a prioritization engine that prioritizes events received from a single IMD implanted within a single patient, and presents a list of events for the patient based on the prioritization, but that Rueter and Hatlestad et al. do not disclose a prioritization engine that prioritizes events received from one or more remote monitors that obtain the events from interrogation of a plurality of medical devices implanted within different patients, and present a list of the patients and a list of the events for each of the patients based on the prioritization. The Examiner appears to have turned to Duffin et al. to overcome these deficiencies in Rueter and Hatlestad et al. However, Duffin et al. makes no mention of prioritization, much less prioritizing events received from one or more remote monitors that obtain the events from interrogation of a plurality of medical devices implanted within different patients. Moreover, Duffin et al. also makes no mention of presenting a list of patients and a list of events for each of the patients, much less presenting such lists based on a prioritization. In support of the Examiner’s position, the Examiner cited the Global Communications and Monitoring System (GCMS) system in Duffin et al., and in particular, the functionality attributed to the GCMS system in Duffin et al. that involves “providing data collection at one central site from all study patients without requiring their active involvement or clinic visits.”²² However, providing data collection at one central site does not necessarily involve prioritizing events, much less prioritizing events received from one or more remote monitors that obtain the events from interrogation of a plurality of medical devices implanted within different patients. Similarly, providing data collection at one central site does not necessarily involve presenting a list of patients and a list of events for each of the patients, much less presenting such lists based on a prioritization. Accordingly, contrary to the

²² Duffin et al., col. 14, lines 25–29.

Examiner's position, Duffin et al. fails to overcome the deficiencies already acknowledged by the Examiner with respect to Rueter and Hatlestad et al.

A *prima facie* case of obviousness requires that the Examiner properly determine the scope and content of the prior art. For at least the reasons discussed above, the Examiner erred by failing to properly determine the scope and content of Duffin et al. Accordingly, Appellant respectfully requests reversal of the rejection of Appellant's claim 39.

The Examiner argued that it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Rueter, Hatlestad et al. and Duffin et al. to arrive at the invention defined by Appellant's claim 39 because "[t]he well known elements described are merely a combination of old elements, and in the combination, each element merely would have performed the same function as it did separately."²³ Appellant submits that the Examiner has erred in this analysis for at least the following reasons.

If one of ordinary skill in the art were to combine Rueter, Hatlestad et al. and Duffin et al. such that the CPU in Rueter (i.e., what the Examiner alleged as corresponding to the "prioritization engine" recited in claim 39) merely performs the same function as it did separately, as suggested by the Examiner, one of ordinary skill in the art would still not arrive the "prioritization engine" recited in Appellant's claim 39 because, as already explained above, the CPU in Rueter does not receive events from one or more remote monitors that obtain the events from interrogation of a plurality of medical devices implanted within different patients, and prioritize such received events. Rather, the determination of clinically significant events by the CPU in Rueter takes place with respect to events that are collected from a single patient by the CPU that makes the determination and is implanted within the patient. Accordingly, combining the teachings of Rueter, Hatlestad et al. and Duffin et al. in the manner suggested by the Examiner would not result in the invention defined by Appellant's claim 39. Therefore, combining the teachings of Rueter, Hatlestad et al. and Duffin et al. in the manner suggested by the Examiner would not result in the invention defined by Appellant's claim 39. Accordingly, any rationale as to why the Examiner's proposed combination would have been obvious to one of ordinary skill in the art at the time of Appellant's invention is not sufficient to explain why the invention defined by Appellant's claim 39 would have been obvious to one of ordinary skill in the art at the time of the invention.

²³ Examiner's Answer dated July 25, 2011, page 22, lines 6-11.

A *prima facie* case of obviousness requires that the Examiner provide an apparent reason to combine known elements in the fashion specified by the claimed invention. For at least the reasons discussed above, the Examiner erred by failing to provide a rationale that is sufficient to explain why a person of ordinary skill in the art would have arrived at the invention defined by Appellant's claim 39 at the time of Appellant's invention. Moreover, as already discussed in Section F of the Appeal Brief dated May 10, 2011, the Examiner's rationale does not appear to be supported by the requisite factual findings necessary to support such a rationale. Accordingly, Appellant respectfully requests reversal of the rejection of Appellant's claim 39.

SECOND GROUND OF REJECTION UNDER APPEAL

GROUP 7 – (Claims 5 and 6)

Claims 5 and 6 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Rueter (U.S. Patent No. 5,944,745) in view of Hatlestad et al. (U.S. Patent Publ. No. 2004/0122294) and Duffin et al. and Hwang (U.S. Patent No. 5,920,271). Appellant respectfully traverses the rejection. Appellant has no additional comments regarding claims 5 and 6, at this time, but does not acquiesce in the Examiner's position for at least the reasons mentioned in the Appeal Brief dated May 11, 2011.

GROUP 8 – (Claims 14 and 15)

Claims 14 and 15 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Rueter (U.S. Patent No. 5,944,745) in view of Hatlestad et al. (U.S. Patent Publ. No. 2004/0122294) and Duffin et al. and Hwang (U.S. Patent No. 5,920,271). Appellant respectfully traverses the rejection. Appellant has no additional comments regarding claims 14 and 15, at this time, but does not acquiesce in the Examiner's position for at least the reasons mentioned in the Appeal Brief dated May 11, 2011.

GROUP 9 – (Claims 26 and 27)

Claims 26 and 27 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Rueter (U.S. Patent No. 5,944,745) in view of Hatlestad et al. (U.S. Patent Publ. No. 2004/0122294) and Duffin et al. and Hwang (U.S. Patent No. 5,920,271). Appellant respectfully

traverses the rejection. Appellant has no additional comments regarding claims 26 and 27, at this time, but does not acquiesce in the Examiner's position for at least the reasons mentioned in the Appeal Brief dated May 11, 2011.

THIRD GROUND OF REJECTION UNDER APPEAL

GROUP 10 – (Claims 20, 21 and 46)

Claims 20, 21 and 46 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Rueter (U.S. Patent No. 5,944,745) in view of Hatlestad et al. (U.S. Patent Publ. No. 2004/0122294) and Duffin et al. (U.S. Patent No. 6,292,698) and Webb et al. (U.S. Patent No. 7,060,031). Appellant has no additional comments regarding claims 20, 21 and 46, at this time, but does not acquiesce in the Examiner's position for at least the reasons mentioned in the Appeal Brief dated May 11, 2011.

GROUP 11 – (Claim 42)

Claim 42 stands rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Rueter (U.S. Patent No. 5,944,745) in view of Hatlestad et al. (U.S. Patent Publ. No. 2004/0122294) and Duffin et al. (U.S. Patent No. 6,292,698) and Webb et al. (U.S. Patent No. 7,060,031). Appellant respectfully traverses the rejection. Appellant has no additional comments regarding claims 26 and 27, at this time, but does not acquiesce in the Examiner's position for at least the reasons mentioned in the Appeal Brief dated May 11, 2011.

FOURTH GROUND OF REJECTION UNDER APPEAL

GROUP 12 – (Claim 45)

Claim 45 stands rejected under 35 U.S.C. § 103(a) as allegedly being obvious by Rueter (U.S. Patent No. 5,944,745) in view of Hatlestad et al. (U.S. Patent Publ. No. 2004/0122294) and Duffin et al. (U.S. Patent No. 6,292,698) and Tamura (U.S. Patent No. 5,434,611). Appellant respectfully traverses the rejection.

Response to Examiner's Answer

In the Appeal Brief dated May 10, 2011, Appellant argued that Tamura does not disclose the features recited in claim 45, namely, "presenting the list of the patients and the list of events such that that a clinician can simultaneously view events obtained from multiple implantable medical devices associated with multiple patients." In the Examiner's Answer, the Examiner argued that "[i]t would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Rueter, Hatlestad and Duffin [to arrive at this feature]."²⁴ However, in the Final Office Action dated October 12, 2010, the Examiner indicated that "Rueter [sic] in view of Hatlestad and Duffin does not teach presenting the list of the patients and the list of events such that that a clinician can simultaneously view events obtained from multiple implantable medical devices associated with multiple patients," and turned to Tamura to allegedly overcome these deficiencies in Rueter, Hatlestad et al. and Duffin et al.²⁵ Therefore, not only does the Examiner's rebuttal contained in the Examiner's Answer contradict the position taken by the Examiner in the Final Office Action, but the Examiner's Answer is non-responsive to Appellant's arguments regarding Tamura. Accordingly, Appellant respectfully requests reversal of the rejection of Appellant's claim 45.

Conclusion of Argument

In view of Appellant's arguments, the final rejections of Appellant's claims are improper and should be reversed. Reversal of all pending rejections and allowance of all pending claims is respectfully requested. Appellant respectfully requests separate review by the Board for each of Groups 1–12 addressed above under separate headings.

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²⁴ Examiner's Answer dated July 25, 2011, page 23, line 6 to page 24, line 17.

²⁵ Final Office Action dated October 12, 2010, page 8, paragraph 19.